

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:95-0198-03

LENNIE JOHN,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

Pending before the Court is a motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008. Pursuant to a Standing Order entered on February 6, 2008, this case was designated for Expedited consideration.

The Court has received and considered the original Presentence Investigation Report (PSI), original Judgment and Commitment Order and Statement of Reasons, plea agreement, and addendum to the PSI from the Probation Office, and received any materials submitted by the parties on this issue. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

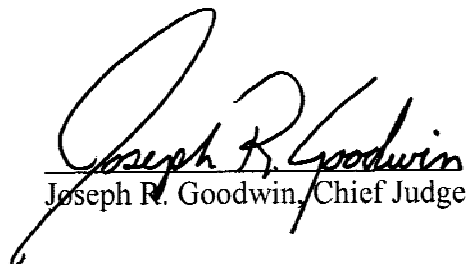
The defendant's original offense conduct resulted in a base offense level of 38, and a criminal history category of III. The defendant had no other enhancements or reductions, with the

exception of a two-level enhancement for possessing a weapon, and three-level reduction for acceptance of responsibility, resulting in a total offense level of 37. His original guideline range was 262 to 327 months, reduced to 240 months as the statutory maximum. The court then departed to a sentence of 180 months under U.S.S.G. 5H1.1. The United States has indicated that it does not object to a two-level reduction in the defendant's sentence.

Based on the foregoing considerations, the Motion is **GRANTED**. The Court **ORDERS** that Defendant's base offense level be reduced by two levels, resulting in a new total offense level of 35, and a guideline range of 210 to 240 months. Pursuant to U.S.S.G. § 1B1.10(b)(2)(B) (providing comparable reductions for departures that predate *United States v. Booker*, 543 U.S. 220 (2005)), it is further **ORDERED** that Defendant's previous sentence be reduced to a period of 171 months, with credit for time served to date. This Order is subject to the prohibition contained within U.S.S.G. § 1B1.10(b)(2)(C).

The Court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, the Federal Bureau of Prisons and the United States Marshals.

ENTER: June 27, 2008


Joseph R. Goodwin, Chief Judge